

The Official Publication of the Division of Real Estate

**SUMMER 2012** 

# Real Estate news

# Deputy Director Returns to Private Sector

On Friday, July 6, 2012, Cary Whitaker worked his last day as the Division of Real Estate's deputy director. He resigned from his position with the state to return to the private sector and work in the mortgage industry. Cary was hired in 2006 as the mortgage program manager and was tasked with setting up the Division's mortgage registration and eventual licensing program, working to ensure that all loan originators conducting business in Colorado were compliant with both state and federal regulations. Cary helped shape the mortgage industry in Colorado, participated in developing and implementing investigative and disciplinary processes and create a mandatory annual update course to keep licensees aware of changing regulations and pertinent issues in the industry. Cary worked for the Division of Real Estate for five years, taking on the role of deputy director in January 2011. Cary has taken a position in the private sector that still allows him to work in the mortgage industry. His new job takes him to Texas for a bit, but he hopes to return to Colorado in the future. The Division is sad to see Cary leave and wishes him the best of luck in his new position.

# Good Luck!

# Director's Corner

# LEAD GENERATION ... Buyer Beware

By Marcia Waters, Division Director

The Division of Real Estate recently became aware of a company that markets to real estate brokers the ability to "team up" with other settlement service providers, typically mortgage loan originators and title companies, for website advertising and lead generation services. In the scenario brought to the Division's attention, the sales pitch involved the broker purchasing a package deal in which the lead generation services were provided along with website

services for the individual broker. According to the broker, the marketing company told the broker to enlist the assistance of a mortgage loan originator or a title company to offset the expense of the services provided to the broker for lead generation and marketing. The company would bill the mortgage loan originator and the title company directly to avoid any perceived violations of the Real Estate Settlement and Procedures Act (RESPA).



# Welcome Two New Real Estate Commissioners; Three New Education Taskforce Members

During its regularly scheduled April Colorado Real Estate Commission meeting, the Division of Real Estate and the Commission announced the names of the two new Commissioners selected to take the place of two retiring Commissioners. Governor John Hickenlooper appointed each person, and Commissioners serve three-year terms.

### Julie Waggener, Public at Large Member, April 2012-April 2015

• Julie is a licensed attorney and partner at Waggener & Foster, LLP. She has been practicing law emphasizing real estate matters since 1975. She previously has worked with the Colorado Real Estate Commission on occasion when the Commission has been presented with various legal issues. Julie has served both as chair of the Real Estate Section of the Colorado Bar Association, and on the Bar Association's Board of Governors, and also has held many positions with professional organizations relating to both commercial and residential real estate issues. She serves as both an expert witness and as a private arbitrator and mediator for commercial, construction and real estate matters. No stranger to disciplinary hearing processes, Julie was a disciplinary hearing officer for the Colorado Supreme Court Grievance Committee during 1990-1994. Julie lives in Denver with her husband, also a lawyer, enjoys all forms of outdoor sports and recreation, and is mother of 3 and grandmother to four grandkids.

#### Amy Jo Dorsey, Industry Representative, April 2012-April 2015

• Amy, a Denver-native and licensed real estate broker for the past 19 years, is an Eagle county resident working in Vail, Beaver Creek, Bachelor Gulch and Arrowhead. She is currently with Slifer Smith & Frampton managing three (3) of the company's 18 offices. Amy served as the 2008/2009 President for the Colorado Association of Realtors, is Past President of the Vail Board of Realtors and held the position of Mountain District Vice President of the Colorado Association of Realtors in 2006. Amy's experience working in resort markets handling both residential and commercial transactions brings a unique perspective to the Commission. Her dedication to the industry and desire to ensure that all real estate licensees are held up to the same standards go hand-in-hand with the Commission's goal of protecting Colorado consumers. Amy is a graduate of Columbia University and traveled around the country with her husband before settling back in Colorado. She lives in the Cordillera Valley Club with her family.

The Commission also confirmed the members of the Education Task Force, which included three new members for 2012. The CREC Education Task Force is responsible for developing the Annual Commission Update Course and provides annual training to providers and schools offering the update course.

#### Damian Cox, licensed attorney, June 2012-June 2013

• Damian Cox has several years experience working within the real estate industry and has taught the Annual Commission Update Course for the Colorado Association of Realtors, Van Education and South Metro Denver Realtor Association. He is a member of the Forms Committee and in 2009 he helped the Forms Committee develop the Colorado Foreclosure Protection Act complaint contract. Damian has experience as a licensed real estate broker and property manager working with both residential and commercial clients. In his current position, he works with real estate brokers, buyers and sellers, private lenders, landlords and tenants and businesses on all aspects of the buying and selling process.

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Department of Regulatory Agencies

Division of Real Estate

#### THE HONORABLE JOHN W. HICKENLOOPER

Governor of Colorado

### **Barbara Kelley**

Executive Director

Department of Regulatory Agencies

#### **Marcia Waters**

Director, Division of Real Estate

COLORADO REAL ESTATE COMMISSION

COLORADO BOARD OF MORTGAGE LOAN ORIGINATORS

COLORADO BOARD OF REAL ESTATE APPRAISERS

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# Appraisal Subcommittee to Recognize Registered Appraisers/Trainees

Beginning July 2013 the ASC will recognize registered/trainees appraisers as a distinct level of licensure. Colorado has always done so and requires the completion of 42 hours of continuing education. This education has not been subject to continuing education audits. However, due to the ASC recognition, registered/trainee appraisers will be sujbected to continuing education audits commencing in 2013.

Your continuing education clocks starts on the issue date of your license and ends on the expiration date of your license. Your 42 hours of continuing education must be taken within the issue date and expiration date. Education taken prior to the issue date or after the expiration will not count for that compliance period.

Look at your license and note your continuing education compliance period. We hope this will help you to ensure you are in compliance with your CE requirements. Are you approaching your expiration date? If so, please make sure that you have the necessary CE. Don't wait until the last minute as you still have time!

For more information on the proposed changes, visit www.askdora.colorado.gov and click "real estate."





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# LEAN and Streamlined

Colorado Governor John W. Hickenlooper shared during his 2012 State of the State address that he is looking into different ways to reduce red tape, increase cost savings and get rid of inefficient or duplicative processes. As part of this package, Gov. Hickenlooper initiated the LEAN program in almost every state Executive branch – one of those being the Department of Regulatory Agencies.

Under the LEAN initiative, state agencies and programs evaluate current procedures, policies and processes to see what works and what doesn't work, where efforts are being duplicated, what resources are being wasted and employee time not being effectively utilized. Modeled after LEAN manufacturing processes made popular by Toyota, staff from the Division of Real Estate and other Divisions in DORA will examine current work flows and procedures to determine inefficiencies and the best ways to streamline how the Division operates.

Examination and implementation should decrease inconsistencies in information received, streamline procedures for investigations and disciplinary cases, improve the application and licensure process and increase consumer and licensee satisfaction. The process is still in the early stages, with DORA's main call center being one of only a handful of sections employing changes made because of LEAN. DORA staff members have been following the new guidelines and are receiving positive feedback from consumers. As different Divisions and programs undergo the LEAN process, people interacting with DORA and Division staff should see an improvement in call hold times, reduced application for licensure processing time and quicker responses from Division and DORA staff.

For more on LEAN, visit www.lean.org; for more on Gov. Hickenlooper's 2012 State of the State Address, visit www.colorado.gov/cs/Satellite/GovHickenlooper/CBON/1251616567775.



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### Mickey Sanders, Training and Sales/Marketing Specialist, June 2012-June 2013

• Mickey Sanders brings her experience as the Director of Realtor Training with Chicago Title of Colorado to the CREC Education Task Force. She currently teaches various real estate courses at Peak Real Estate College, Red Rocks Community College and The Real Estate School in addition to her job at Chicago Title. Mickey has created, developed, and presented training programs on more than 25 different topics in real estate and has delivered her training to groups as large as 250 people. She has provided input on current and past Annual Commission Update courses during Train the Trainer sessions. As the Education Task Force begins developing the 2013 Annual Commission Update Course, her experience in training large groups of licensees will be beneficial.

#### Robert Lynde, Owner – Milestone Real Estate Services, June 2012-June 2013

• Robert Lynde has been a licensed real estate broker since 2003 and a member of the National Association of Property Managers since then as well. He adds more than 8 years of property management experience to the Task Force. Property management is moving to forefront of the real estate industry and his added input will be beneficial to all licensees when the Task Force begins developing the Annual Commission Update Course. Robert, one of two NARPM members serving on the Task Force, has taught several courses for NARPM and taught at a Landlord Symposium in 2011. He has developed and submitted courses to the Division for continuing education credit and is fully knowledgeable with the application process, standards and requirements. His expertise in this section of real estate will be essential to helping the Task Force develop a well-rounded Annual Commission Update Course.

Please welcome our new Commissioners and Task Force members! If you would like to see them in action, please visit www.askdora.colorado.gov, click on real estate and select "meetings" for a list of dates, times and locations of meetings. All meetings are open to the public.





This section is reserved for articles written and submitted by members of the real estate industry with varied experience in different fields. The views and opinions expressed are those of the author and do not represent the views or opinions of the staff of the Division of Real Estate or DORA.

# Etrinent Domain Appraisals

Bringing Fairness And Objectivity To Acquisition Of Private Property For A Public Purpose

By: M. Jay Kramer, MAI

The process of Eminent Domain has deep roots in the U.S. Constitution. The Fifth Amendment of the U.S. Constitution, also known as "the takings clause", guarantees payment of just compensation upon a taking of private property for public use. The Fourteenth Amendment of the U.S. Constitution states that "...nor shall any state deprive any person of life, liberty, or property without due process of law". These constitutional protections ensure the use for which the land is being taken must be a public use and that the property owner must receive just compensation for property that is acquired. The Colorado Constitution, Art. II, Sec. 15, provides similar protections.

For the federal government and the State of Colorado to support and provide appropriate protection to property owners as intended under the U.S. Constitution, various federal regulations and state statutes have been effectuated. A sampling of these is as follows:

Federal Regulations – The federal government implemented the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (aka "the Uniform Act"), and has amended it several times since its inception. The Uniform Act was created as a measure to ensure fair and equitable treatment of property owners through the various stages of acquisition of private property, including appraisal, negotiation, and relocation. Pursuant to the provisions of the Uniform Act in the Code of Federal Regulations, 49 CFR Part 24, Subpart B, sections 24.102, 24.103, and 24.104, there are a variety of appraisal requirements imposed upon public agencies using federal funds for their projects or otherwise impacting federal facilities. Such requirements include, but are not limited to, the following:

- If the value of the acquisition is estimated to be \$10,000 or more, or if the valuation of the property is complicated, the Agency shall determine the value of the property by obtaining an appraisal.
- Provide the property owner the opportunity to accompany the agency's appraiser during the appraiser's inspection of the property.
- Before an agency can make a formal offer to the property owner, the amount of such offer shall not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property.
- If the information provided by the owner or a material change in the character or condition of the property indicates the need for new appraisal information, the Agency shall have the appraisal updated or obtain a new appraisal and update its offer as appropriate.



- If the acquisition of only a portion of a property would the leave the owner with an uneconomic remnant, the Agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project.
- No person shall attempt to unduly influence or coerce an appraiser or review appraiser.
- Persons functioning as negotiators may not supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work.
- If the agency uses a contract (fee) appraiser to perform the appraisal, such appraiser shall be state-licensed.
- Appraisals are to be prepared in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP), the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA or the "Yellow Book"), and other appropriate agency requirements.

• The Agency shall conduct an appraisal review to ensure compliance with the applicable requirements and to determine an "approved" value for the purposes of making an acceptable offer to the property owner.

• For acquisitions that are non-complex and under \$10,000, the Agency may prepare a valuation waiver instead of an appraisal; however, the person preparing the valuation waiver must have a sufficient understanding of the local real estate market to be qualified to make the waiver valuation.

Colorado State Statutes – The Colorado legislature implemented various state statutes in an effort to mirror the described federal regulations and to also protect property owners for acquisition of their property by public agencies that do not necessarily fall under the purview of the federal regulations. Some of the appraisal-related protections provided to property owners whose property is acquired by a Colorado public entity with powers of eminent domain include:

• CRS 24-56-117 mirrors the Uniform Act regarding such protections as the owner accompanies the appraiser, the value of the property is to be established by appraisal, offer for purchase must be no less than appraised value, offer to purchase uneconomic remainders, and other related provisions.

• CRS 38-1-101 ensures payment of just compensation, acquiring property only for the necessity for public use and benefit, determination of compensation by a Board of three impartial freeholders unless the property owner selects a jury, and other related provisions.

• CRS 38-1-105 requires that the Board or jury consider Highest and Best Use and that any encumbrance adding to, or subtracting from, Fair Market Value must be considered in the valuation.

• CRS 38-1-114 sets forth various requirements including:

 The date of valuation is to be the date possession is obtained.

 The amount of compensation is the Reasonable Market Value of the said property on the date of valuation.

 For partial acquisitions, specific damages and benefits to the remainder (portion of the property not being acquired) shall be determined.

 The measure of damages to the remainder shall be the diminution of market value.

 CRS 38-1-121 is very appraisal-specific as follows:

 If acquired property has a value of \$5,000 or more, the agency shall notify landowner of his/ her right to

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Die or in part without

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# HOA Reserve

By Chuck Carvey

#### Intro

Most reading this article live in an Association. Many serve on the Board of Directors for their Association, providing their professional expertise to this volunteer governing body. All involved in residential sales, and increasingly those in commercial sales, must interact with owner's associations when a unit is conveyed. It is wise to know this animal with which we must interact.

Homeowner Associations are responsible for the maintenance and repair of infrastructure and systems in common areas. These can be as simple as the responsibility for a park in a small single family home community to a complicated, multi-million dollar responsibility in a large community of detached homes or a luxury high rise condominium. It is a prudent move for the Association to engage the services of a professional to establish a plan for the maintenance, repair and replacement of these costly items, also known as capital items.

**Reserve Study Description** 

The Reserve Study identifies all items for which the Association is responsible. Some of the obvious are roof, siding, club house, and pools. Other items may include irrigation systems (including those on the community golf course in some cases), vehicles used by the Association staff, and underground plumbing systems designed to carry ground water away from the perimeter walls of structures within the community but separate from the sanitary or storm sewer systems. The condition of each component is evaluated in the light of its total expected usefulness, its life cycle. The actual age is compared to observed condition and a date is calculated for any preventative maintenance and replacement.

The Reserve Study calculates the cost of replacement and any preventative maintenance in current dollars. An annual cost escalator is applied to compute the replacement cost at the point in the future when the life cycle determines replacement is due.

The final component of the Reserve Study is to calculate the amount of funds which will be required for each of the next 20-30 years for the replacement of these components.



Current levels of funding for the Reserve account are examined and increased funding recommended if applicable.

The Reserve Study Compilation

A reserve Study can be a simple spreadsheet created by a Board member or Manager to estimate the cost and timing for the replacement of all capital items. The cost to create this system is very low, but the life-cycle estimates and replacement costs can be quite subjective. Recent experience in a mountain community illustrates the potential for the omission of building components, like siding replacement, may have quite a significant cost.

An Association can choose a "Do-It-Yourself" package from a national reserve study provider. All the field work is performed by Association volunteers and the results transmitted to the national office where the financial computations are performed and the final report is generated. This method improves accuracy of replacement costs, but is still weak in assessing life-cycle placement and completeness of the study.

A complete reserve study performed by an experienced provider delivers the most trustworthy report. The provider sends qualified inspection personnel to the site to view all common areas. Contractor selection is very important. There is no federal or state regulation over companies performing these

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By Eric Gold

The term "full-service" takes on a whole new meaning in a challenging economy.
Retail stores diversify, add new product lines.
Self-service filling stations bring on a mechanic for maintenance and light repairs. A roadside café adds a liquor license. You get the gist.
These and other operations seek to become more of a "one-stop shop," or a "turnkey" operation.

They seek to offer what they feel is a "full range of services." And in many cases, the application of that theory works just fine. In real estate brokerage, not so much. There is no such thing as a "full-service" real estate broker. It's just not possible for one professional to be consistently proficient in every nuance of every market sector across every conceivable property type and geographical location, residential or commercial. No one person can do all that without significantly compromising at least one core area of competency.

Providing brokerage services for a national chain of big box retail stores is not the same as finding space for a mom and pop hardware store in a strip mall. Similarly, a commercial office broker experienced in representing tenants and landlords does not possess the same skill set as a broker who sells apartment buildings. While these types of assignments all fall under the umbrella of "commercial" real estate brokerage, each is vastly different from the other.

Crossing over from the residential side to commercial one can promote even more uncertainty for both broker and client.
Residential brokers may "dabble" in commercial circles and vice versa, but should the word "dabble" even be used in the lexicon of our industry vocabulary these days? Probably not.

It's difficult to blame anyone in this economy for attempting to improve their station in life, and that certainly includes real estate brokers. We all want to adapt, progress and improve, but not by claiming to be someone we're not, and certainly not at the expense of our clients. That is not to say that any given broker intends to purposely mislead a client or prospect. That's not the point. Again, a broker may be as competent as humanly possible in one area of a specific service sector and know very little about another. There's nothing "full service" about that.

A real estate broker's primary responsibility is to serve the client by offering the best possible training, experience and knowledge, which equates to overall competency. DORA upholds that very notion in its 2012 Commission Update Course.

In a nutshell, if a real estate broker lacks the adequate experience and qualifications to deliver specific transaction services in a particular environment, he or she must gain that competency before practicing the profession, or seek other options.

One of those options might require a residential broker to team up with a commercial colleague to deliver more comprehensive services.

Another might necessitate a broker to step away from a deal altogether, take a referral fee and leave the transaction to a broker best suited for the specialized property type or market in which the transaction will occur.

There is much to be said for expertise. Stepping away from one's core area of competency can create a distinct lack of service to the client.

Worse, it can invite significant liability for the inexperienced broker in both commercial and residential transactions.

Eric J. Gold is president and owner of Sheldon-Gold Realty Inc. Commercial Real Estate Services, a 26-year old brokerage firm specializing in landlord, seller, buyer and tenant representation for office properties in the Denver metro area. You can reach Eric at 303-741-2500 or www.sg-realty.com



# The Colorado Energy Office and Green Building Valuation: What have they been doing?

Overthe past few years, the Colorado Energy Office (CEO, formerly the Governor's Energy Office) has been working with industry stakeholders to better understand the role of energy efficiency in the home buying process. Why is this important? If we find that energy efficient features have a value in the market, it will provide another reason for Coloradans to consider home improvements that can reduce energy use and utility bills. And with 2.2 million residential dwellings in Colorado, the retrofit of even 5% of homes represents a \$1 billion opportunity!

Here is some information about the CEO programs that may interest those in the real estate industry:

#### The Green MLS

For the growing number of homebuyers interested in saving money on energy, there has not always been an easy way to find information about prospective homes. But starting in 2009, the CEO gathered industry stakeholders to develop recommendations for searchable energy fields for Multiple Listing Services (MLS) in Colorado. The group identified the key attributes of energy efficiency most likely to provide added value for the consumer, and by making these fields searchable, Colorado's MLS will provide home buyers and real estate brokers with new tools to help find the perfect home. In addition to the searchable fields, there is also a new disclosure form that allows sellers to showcase additional common attributes of a "green" home.

Ninety percent (90%) of Colorado's homes are now covered by a green MLS, and real estate brokers are beginning to upload information into the new fields to be used as a tool in the home buying process.

**Valuation Study** 

Several studies throughout the country indicate that properties with energy efficient features placed on a "green" MLS sell faster or for a financial premium in the market. Until now, this

information has not been available in Colorado. The CEO has commissioned a set of studies in different regions of the state to discover whether or not there is an emerging trend of consumers valuing energy efficiency in the home buying process.

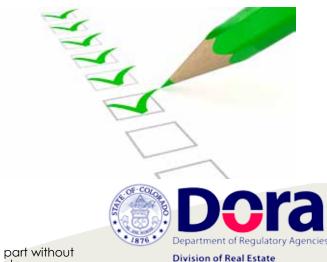
The CEO has developed these studies in collaboration with professional appraisal groups and will initially focus on the North Metro Denver discretionary home buyer market during the 2012 selling season.

**ENERGY STAR / Energy Saving Mortgage** 

In partnership with the Bank of Colorado, the CEO has developed the ENERGY STAR and Energy Saving Mortgage products to benefit Colorado homebuyers and those refinancing an existing mortgage. Through the addition of one discount point that can be used to buy or remodel a home with energy efficiency features, these products generally result in a reduction of energy bills that exceeds the amortized cost of the improvements and provides a significant monthly savings to the customer.

All improvements must follow program guidelines which can be found at the CEO website: www. colorado.gov/energy. The maximum benefit of these programs is \$5,000.

For more information on any of these programs, please contact Peter Rusin, CEO's Residential Program Associate at Peter.Rusin@state.co.us.



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obtain an appraisal that the agency will pay the reasonable cost of.

- Such appraisal obtained by the property owner shall be made using sound fair and recognized appraisal practices which are consistent with law.
- The owner's appraisal is to be submitted within 90 days of notice from the acquiring agency.
- When the owner's appraisal is provided to the agency, the agency shall provide the owner with its appraisal.

Agencies acquiring private property for public purposes, and property owners as well, are best served by appraisers who have sufficient experience in the field of eminent domain appraisal. Experienced eminent domain appraisers better understand how to: (1) read and interpret right-of-way plans; (2) ensure that the appraisal steps used in Colorado as part of the "modified state rule" are properly followed; (3) are better trained to make complex Highest and Best Use determinations; and (4) can more accurately identify and derive values for damages and specific benefits. CDOT pays special attention to obtain appraisals from appropriately qualified appraisers for the particular property type to be appraised and then makes sure a careful appraisal review is performed commensurate with the complexity of the appraisal assignment.

CDOT does a similar comprehensive review of each appraisal report prepared on behalf of the property owner. High quality appraisals prepared both for the acquiring agency and the property owner that are thoroughly reviewed by the agency help to ensure a good faith negotiation that results in the property owner receiving the just compensation that he/she is legally entitled to. CDOT's careful attention to the appraisal process applies not only to its own transportation projects, but also to local agency projects for which CDOT has responsibilities for administrative oversight.

M. Jay Kramer, MAI® has spent his entire real estate career in Denver, active in appraisal and a variety of advisory services. He worked first as an independent fee appraiser and advisor in the private sector, followed by employment with Colorado public agencies in asset management, right-of-way, and appraisal roles. He currently serves as the Acting Manager of the Statewide Appraisal Program for the Colorado Department of Transportation (CDOT), after serving eight years as the Right-of-Way Manager for CDOT Region One.

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# INDUSTRY EXPERTS

services. It is imperative that previous work results be received and weighed. One recent reserve study contractor discovered a million dollar item which had been omitted by the previously done reserve study. Which of these two well known contractors would you like on your property?

**Using the Reserve Study** 

Upon delivery of the Reserve Study report, the Board must study it and prepare questions. A meeting which includes the Board, Management, and the Reserve Study provider should be part of the process. Early in the process, the frequency of updating the report should be decided. There should be a focus on the development of a plan to implement the report. After the report is clarified and finalized, the results should be clearly communicated to all owners. It is possible that the report will recommend an increased funding level for the Association's Reserve account. This usually results in a Special Assessment or an increase in Regular Assessments for all the owners.

Impact on Sales

Selling units in an Association can be challenging. Prospective purchasers are curious about the financial condition of the Association into which they are buying. If the Association has a recent, professionally produced Reserve Study it can provide the Buyer with confidence that the governance of the community includes sound fiscal management. Proper management of the capital replacements addressed in a Reserve Study makes a Special Assessment less likely. Catastrophic failures occur less frequently when proper preventative work is completed.

#### Conclusion

In my opinion, every owners association should contract for a professional Reserve Study and should update that study every 3-5 years. The Association should implement the recommendations of the report generated by the service provider to preserve and protect the assets of the Association. We should all check to see if the Association in which we live has already done a Reserve Study. If not, voice this concern to your Board of Directors. Properly produced and implemented Reserve Studies enhance the property value for every owner in the Association.

As a brief bio Blurb:

I've worked in real estate property management since 1979, and in HOA specific management since 1982.

I have the following management credentials – CMCA, AMS, and PCAM Member of the Mountain Education Committee of the Rocky Mountain Chapter of Community Associations Institute Colorado Employing Broker Currently working with Wildernest Community Management in Silverthorne, Colorado carveyc@wildernest.com 970.513.5600.



Division of Real Estate

# News, Notes and Information from the Division of Real Estate

### **Appraiser Notes**

- The Board of Real Estate Appraisers adopted a new rule at a Rule Making Hearing held July 19, 2012. This rule will become effective September 14, 2012.
  - Rule 7.24: AQB Certified USPAP Instructors: In accordance the Appraiser Qualification Board, this rule amends or repeals existing rules with respect to appraiser continuing education requirements.

### **HOA Information & Resource Office Notes**

• The Division of Real Estate is reviewing applications for the HOA Information Officer position. The Division is no longer accepting applications for the position and hopes to announce the new HOA Information Officer soon.

### **Mortgage Loan Originator Notes**

- Two new rules became effective July 15, 2012 after being approved by the Board of Mortgage Loan Originators at its May rule-making hearing.
  - Rule 1-1-8: S.A.F.E. Act Compliance: This rule, unless otherwise determined by the Consumer Finance Protection Bureau, brings Colorado's mortgage loan originator regulatory program into compliance with the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (the "S.A.F.E. Act").
  - Rule 8-1-1: Mortgage Loan Originator Advertising: This rule is intended to notify mortgage loan originators and mortgage companies about all current regulations that address advertising and to ensure the advertising of nontraditional mortgage products is addressed.

### **Real Estate Broker Notes**

- At its June 2012 Rule Making Hearing, the Commission voted to adopt two new rules, both of which will be effective July 30, 2012.
  - Rule D-14: Errors and Omissions (E&O) Insurance: This rule will amend or repeal existing rules with respect to requirements for license renewal, transfer, inactivation and errors and omission insurance for real estate brokers.
  - Rule E: Separate Accounts Records Accountings Investigations: This rule will amend or repeal existing rules with respect to trust accounts maintained by real estate brokers, record keeping requirements and practice requirements for real estate brokers.

Rule making hearings and Board and Commission meetings are open to the public and take place at the Department of Regulatory Agencies offices, 1560 Broadway, Denver, CO, 80202. All meetings start at 9 a.m., but location varies within the building. Please visit www.askdora.colorado.gov, click on "Real Estate," and select "Meeting Schedules" for an up-to-date list of all upcoming meetings and rule making hears, including location.

For the full text of these rules, or any other rules and position statements passed by the Board or Commissions, please visit www.askdora.colorado.gov, click on "Real Estate," and then select "Rules and Position Statements."

Department of Regulatory Agencies

# 2015 AQB Criteria for Licensing Will Impact Appraisers at All Licensure Levels

Applicants for certified general licensure should note that 3,000 hours of appraisal experience must have been completed in no less than thirty (30) months. Therefore, any applicant who wishes to apply for certified general under the current criteria must have commenced their 3,000 hours experience by no later than July 1, 2012. If this deadline has not been met, the applicants will no longer be able to substitute the ten (10) subject matter college courses in lieu of a Bachelor's degree. See AQB January 2012 "The Real Property Appraiser Qualification Criteria and Interpretations of the Criteria".

Applicants for certified residential licensure should note that 2,500 hours of appraisal experience must have been completed in no less than twenty-four (24) months. Therefore, any applicant who wishes to apply for certified residential under the current criteria must commence their 2,500 hours experience by no later than December 31, 2012. If this has not be achieved the applicants will no longer be able to substitute the seven (7) subject matter college courses in lieu of a Associates degree and will require a Bachelors degree. See AQB January 2012 "The Real Property Appraiser Qualification Criteria and Interpretations of the Criteria".

Applicants for licensed appraiser should note that 2,000 hours of appraisal experience must have been completed in no less than twelve (12) months. Therefore, any applicant who wishes to apply for licensed appraiser under the current criteria must commence their 2,000 hours experience by no later than December 31, 2013. If this has not be achieved the applicants will be required to have an Associates degree. See AQB January 2012 "The Real Property Appraiser Qualification Criteria and Interpretations of the Criteria".

Applicants for registered/trainee appraiser are not required to possess a college degree or to complete any prior experience. However, there are restrictions on registered/trainee appraiser, as they may not prepare appraisals unless supervised by another appraiser holding no less than a certified level credential. Most registered/trainee appraisers will therefore strive to achieve, at the very least, the license level. They will thus be impacted by the time restrictions as stated above.

A more detailed summary of the changes to the Criteria is available at the following link: https://appraisalfoundation.sharefile.com/d/sd2f26fafefe402ab.

October 2011 AQB Exposure Draft and Comments: http://www.appraisalfoundation.org/

The Appraisal Foundation: http://www.appraisalfoundation.org/





The cost of the website and lead generation service was a monthly charge of approximately \$2,500.00, with the mortgage company and title company each paying \$1,000.00. The real estate broker only paid \$500.00. In return, there were very basic links placed on the real estate broker's website that directed traffic to the mortgage loan originator and the title company websites. The amount paid by the mortgage loan originator and the title company was not commensurate of the advertising services they received. To further aggravate the issue, the real estate broker included in his advertisements for his listings that prospective buyers were required to prequalify with the loan originator. Moreover, when a title company inquired about possible future business from the broker, the broker told them that he had already "teamed" up with a different title company that was willing to pay \$1,000.00 toward the broker's marketing program so the broker would be "in tight with them", or directly refer business to the title company.

What, if any, are the issues with the proposed practice? From the Real Estate Commission's perspective, the most glaring issue from the Division's standpoint is that it would appear that the real estate broker is violating Commission Rule E-22, which prohibits a real estate broker from giving or receiving a think of value, directly or indirectly, for the referral of business. It is not appropriate to have a settlement service provider, in this particular instance the mortgage loan originator and the title company, pay for the real estate broker's advertising and lead generation services. If real estate brokers are going to offer to provide marketing services to other settlement service providers, the services need to be comparable to those provided by a marketing firm and the cost needs to be equal to the services provided. For example, if the mortgage loan originator agrees to pay for 50% of the real estate broker's website and they agree to market their services jointly, then the 50% of the website should be dedicated to marketing the mortgage loan originator.

Additional issues are the real estate broker's required use of the mortgage loan originator for prequalification purposes and the steering of consumers to one particular title company, which essentially had the effect of selecting the title company for the consumer. As mentioned in the spring edition of the newsletter, real estate brokers should not be selecting settlement service providers for the consumer. Also, a real estate broker cannot require the use of another settlement service provider. Not only would the Real Estate Commission have grounds to take action against the real estate broker's license, but pursuant to the license law, the Real Estate Commission would be required to refer the potential RESPA violation to the Consumer Finance and Protection Bureau for investigation. Real estate brokers have until September 1, 2012 to ensure that any marketing

or lead generation programs in which they are participating are compliant with state and federal law. If complaints are received after that date regarding these practices, the Real Estate Commission will address each complaint appropriately.

Real estate brokers are not the only licensed professionals implicated in the scenario. From the Board of Mortgage Loan Originators' perspective, it is a violation of the mortgage loan originators' licensing act to fail to comply with RESPA. A mortgage loan originator cannot accept or receive a thing of value. directly or indirectly, for the referral of business, nor can they require the use of particular settlement service provider. The Board of Mortgage Loan Originators have also granted licensed mortgage loan a grace period until September 1, 2012 to ensure that any marketing or lead generation programs in which they participate are compliant with state and federal law. The Board of Mortgage Loan Originators is also required to refer RESPA violations to the Consumer Finance Protection Bureau. Additionally, complaints that the Division receives that indicate the involvement of a title company will be referred to the Division of Insurance. The Insurance Commissioner has the authority to enforce RESPA.





### Disciplinary Action Taken by the Real Estate Commission

Alphabetical by last name, real estate brokers only. List contains discipline from April 1, 2012 - June 30, 2012.

Bubar, Jeffrey—Public Censure and Fine

Chomyn, Patrick—Summary Suspension

**Cowles, Charles**—Public Censure, Permanent Surrender, Stayed Fine and Stayed Restitution

**Forsberg, Robert G.**—Public Censure, Permanent Surrender and Stayed Fine

**Maggio, Richard**—Permanent Revocation, Fine and Public Censure

**Oviedo, John**—Public Censure, Fine, Suspension, Probation Concurrent with Criminal Sentence

**Powell, William J.**—Public Censure, Fine, Suspension and Coursework

**Rich, Lacy (Chip)**—Public Censure, Fine, Coursework and On site Practice/Financial Audit

**Roberts, Clayton**—Public Censure, Fine and Coursework

**Stonebarger, Daniel**—Public Censure, Fine, Suspension, Probation Requiring Supervision

**Svoboda, Phillip**—Public Censure, Fine and Coursework

**Tracy, Carolyn Sue**—Public Censure, Suspension, Fine and Coursework

\*\*Note: This notice serves to inform the public of the current and/or most recent disciplinary action taken against the individual listed. It DOES NOT, nor should it be intended to, serve as a complete listing of any and all discipline taken against the licensee. For complete license information including license status and additional disciplinary actions, please visit www.askdora.colorado.gov and click "Division of Real Estate."

## Disciplinary Action Taken by the Board of Mortgage Loan Originators

Alphabetical by last name, MLOs only. List contains discipline from April 1, 2012 - June 30, 2012.

**Biggers, Michael**—Public Censure, Permanent Revocation and Stayed Fine

Caplan, James—Cease and Desist

**Garcia, Mario**—Public Censure, Cease and Desist, Fine and Restitution

Wright, Shirley—Cease and Desist

\*\*Note: This notice serves to inform the public of the current and/or most recent disciplinary action taken against the individual listed. It DOES NOT, nor should it be intended to, serve as a complete listing of any and all discipline taken against the licensee. For complete license information including license status and additional disciplinary actions, please visit www.askdora.colorado.gov and click "Division of Real Estate."

